



POLICE DEPARTMENT

August 20, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Tara Bannon
Tax Registry No. 921949
123 Precinct
Disciplinary Case No. 2014-11476

The above-named member of the Department appeared before the Court on January 21 and May 1, 2015, charged with the following:

1. Said Police Officer Tara Bannon-Albarano,¹ on or about June 11, 2013, at approximately 1230 hours, while assigned to the 123rd Precinct and on duty, in the vicinity of Huguenot Avenue and Rosedale Avenue, Richmond County, was discourteous to Domenica DiMaggio.

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERAL

2. Said Police Officer Tara Bannon-Albarano, on or about June 11, 2013, at approximately 1230 hours, while assigned to the 123rd Precinct and on duty, inside of the 123rd Precinct located at 116 Main Street, Richmond County, abused her authority as a member of the New York City Police Department in that she conducted a strip search of Domenica DiMaggio without sufficient legal authority.

P.G. 208-05, Page 2, Paragraph C – ARRESTS – GENERAL SEARCH GUIDELINES

The Civilian Complaint Review Board (CCRB) was represented by Jonathan Fogel and Raasheja N. Page, Esqs. Respondent was represented by Michael A. Martinez, Esq., Worth, Longworth & London LLP.

¹ Respondent's surname currently is solely "Bannon."

Respondent pleaded Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of Specification No. 1, and Guilty of Specification No. 2.

Specification No. 1

Facts

The complainants in this CCRB case, Domenica and Giovanni Dimaggio, a married couple, were driving their van on the date in question on Staten Island when they were pulled over by Respondent and now-retired Police Officer Scott Drummond (Tr. 20-22, 87-89, 133-36, 226-28, 230). Because the CCRB did not charge Respondent with stopping the complainants' vehicle unlawfully, the justification for the vehicular stop is not at issue.

The officers approached the vehicle and Drummond asked for license and registration. It was undisputed that Mr. Dimaggio, the driver, responded by asking loudly, "Why am I being pulled over?," and that Drummond responded by asking for license and registration. This went back and forth for three to five minutes. Ms. Dimaggio described both Drummond and her husband as loud (Tr. 23, 56, 58, 62, 87-89, 93, 105-06, 232).

Eventually, Ms. Dimaggio said, her husband took out his billfold. He first gave a Patrolmen's Benevolent Association (PBA) card, but only, Ms. Dimaggio claimed, because it was on top. Drummond threw it back onto the dashboard, saying, "I don't care who you know." Mr. Dimaggio provided his license and registration, and things were calming down, but in the midst Respondent came to the driver side. The Dimaggios described Respondent as profane. When Ms. Dimaggio asked her why she was cursing, Respondent replied, "I'm not talking to

you. Shut the fuck up. . . . Mind your fucking business.” It was undisputed that Ms. Dimaggio told Respondent that “[t]he guys have it under control now. Why you coming yelling and screaming? Everything’s okay. Let the guys handle it” (Tr. 24-26, 59-65, 89-92, 106-07, 111-12).

Ms. Dimaggio testified that Respondent threatened to arrest her if she did not keep quiet. From the driver side of the van, Respondent ordered Ms. Dimaggio out by saying “Get the fuck out of the car,” and handcuffed her. As Respondent frisked Ms. Dimaggio, she said in the complainant’s ear, “How do you like that, twat?” Respondent also called her a cunt and told her she did not “give a fuck” that the handcuffs hurt. As Respondent told Ms. Dimaggio that she was being arrested, her husband got upset and banged the steering wheel, saying, “Why you arresting her? She didn’t do anything.” Mr. Dimaggio claimed that he did this because he was worried Respondent was going to fight his wife (Tr. 26, 28-29, 65, 67-70, 91-92, 100, 113-16).

Ms. Dimaggio testified that Respondent whispered in her ear as she was placing her in the police vehicle, “Go fuck your mother.” Ms. Dimaggio admitted that she replied, “No, go fuck your father.” Both Dimaggios were arrested and brought to the 123 Precinct stationhouse (Tr. 29-30, 72, 94-95).

Respondent testified that Mr. Dimaggio flung the PBA card at Drummond. In fact, according to Drummond, Mr. Dimaggio only wanted to show him the PBA card. After three times of asking, Drummond threw the PBA card on the dashboard and directed the driver to provide what he had asked for (Tr. 136-37, 167-69, 232-33).

This set off Ms. Dimaggio. According to Drummond, she said to her husband, “Oh, he’s one of those fucking cops” and took off her sunglasses, saying, “Giovanni, I’m going to jail today” (Tr. 137-38, 169). Respondent testified that she said, “Don’t you guys in the 123 have anything else better to do? You fuck your mothers and your fathers out here.” Drummond said

that Ms. Dimaggio came out of the van herself and called Respondent a “Puerto Rican dyke,” adding, “You can’t get a man.” Additionally, Respondent said, Ms. Dimaggio told her, “Fuck you, you Puerto Rican. Let the men sort it out.” Both Drummond and Respondent denied that Respondent used any profanity (Tr. 140-41, 150, 171, 235-36, 256). The only thing she said was “Calm down” (Tr. 236).

Respondent testified that when Drummond refused to give Mr. Dimaggio any courtesy, he became “white foam” irate and began pounding the steering wheel with his fists. Respondent went over to the driver side from where she had been on the passenger side to back up Drummond. As Respondent handcuffed Ms. Dimaggio, her husband started pounding the side of the van (Tr. 174-75, 233-38).

Drummond and Respondent agreed that they had to call a 10-85 for assistance in dealing with the complainants. Eventually, the Dimaggios were released from the precinct with summonses for disorderly conduct (Penal Law § 240.20 [1], engaging in fighting, or violent, threatening or tumultuous conduct, with intent to cause public annoyance or alarm or recklessly creating that risk; Tr. 36, 149-50, 171, 194; CCRBX Exhibits 1 and 2, summonses issued to Ms. and Mr. Dimaggio, respectively). The couple are suing the Department over the incident (Tr. 40-41).

Findings and Analysis

Respondent is charged in the first specification with discourtesy toward Ms. Dimaggio. To make a finding, the Court is required to judge the complainants’ credibility against that of the officers. The Court found both Respondent and Drummond to be credible. They were stern but straightforward officers that simply were attempting to make a traffic stop. Their demeanor suggested that they had no reason to engage in personal attacks against the motorists.

The complainants, on the other hand, were not credible witnesses. Their own testimony established that they made a simple traffic stop into an angry dispute between them and the police. Mr. Dimaggio refused to give his license and registration when lawfully asked by Drummond. He demanded instead to know why he was pulled over, the answer to which he had no right to receive. He then had the audacity to ask for courtesy by unsubtly handing over a PBA card. The officers testified that when Drummond justifiably refused, Mr. Dimaggio became irate. Ms. Dimaggio, Drummond and Respondent all indicated that Respondent then went over to the driver side of the van from the passenger side where she had been. She would have had no reason to do so, and it would have been tactically unwise, unless she had to back up Drummond. This supports the officers' testimony that Mr. Dimaggio was unreasonably angry, enraged in fact. It also was undisputed he was so angry that he began punching his own van, and that the officers had to call a 10-85 to deal with the complainants' conduct (Tr. 67, 139-40, 187-88, 239-40).

Ms. Dimaggio added several credibility problems of her own. She made gratuitous claims, like not remembering if she had been in the car with her husband when he was pulled over in the past (Tr. 53), or that Drummond cursed at her, she just could not remember when (Tr. 63).

Most significant, however, were both complainants' sexist, ethnic, and homophobic tirades toward Respondent as a female police officer. Mr. Dimaggio referred to her as the "police girl." Mr. Dimaggio, a native of Italy, spoke heavily accented but understandable English. He did not need an interpreter and knew the word "woman." The "police girl" remark thus cannot be explained away by any language barrier. Mr. Dimaggio apparently also derisively waved at Respondent during the trial (see Tr. 103, "How you doing?"). The complainants admitted that Ms. Dimaggio told Respondent to "let the men sort it out."

Most telling was Ms. Dimaggio's admission that when she realized Respondent spoke Italian, she warned her husband not to say anything in Italian about Respondent – "John, she's . . . She speaks Italian." Respondent heard them and said, "That's right, I'm a hundred percent Sicilian" (Tr. 35-36, 74-75). The only reasonable explanation for why Respondent would have to so vociferously assert her ethnicity is if the complainants had suggested something else – like, as Respondent testified, calling her a "Puerto Rican dyke."

In sum, the CCRB failed to prove that Respondent made any discourteous remarks. Thus she is found Not Guilty of Specification No. 1.

Specification No. 2

Facts

Respondent is charged in the second specification with conducting a strip search of Ms. Dimaggio without sufficient legal authority. Drummond was the arresting officer. At the precinct, Drummond testified, the desk officer, Sergeant Kema Cornejo, told him to make sure to do a thorough search of the prisoner. All three members agreed at trial that there had been a recent incident at the command in which contraband was found in the cells. Cornejo, at trial, described her instruction as to make sure Ms. Dimaggio had nothing on her and to relay that to Respondent. She did not, however, authorize a strip search. Drummond testified that Respondent was standing nearby. He advised her to re-search Ms. Dimaggio (Tr. 145-49, 187, 190-94, 198, 205-06, 211, 218-19, 243-45, 273, 288).

Ms. Dimaggio testified that Respondent took her to a holding cell. While Respondent stood on the other side of the cell bars, she ordered Ms. Dimaggio to lift up her shirt and her bra. She also told her to lift her breasts and to bend toward her so that she could see the upper part of her chest. Respondent also told Ms. Dimaggio to pull down her pants and underwear. She

complied. Her vaginal area was exposed, though she was trying to cover herself with her shirt. She did not recall whether she was wearing a long shirt (Tr. 31-35, 37, 42).

Respondent testified that she did not feel it would be prudent to touch Ms. Dimaggio because of how irately she had acted. She instructed the prisoner to, over her long shirt, take her bra and "shake out the bra with the breasts in place of it" so that anything stashed under the breasts would fall out. The idea was to lift the breasts, bra and shirt in one motion. Ms. Dimaggio complied with Respondent's directive, though Respondent conceded that she was able to see the bottom half of the prisoner's sports bra as she did so. She was looking at the floor the whole time to see if anything fell out (Tr. 248-49, 251-52, 256, 260, 263-67, 304).

Respondent next instructed Ms. Dimaggio to stand with her legs shoulder-width apart. She then directed Ms. Dimaggio to shake out the elastic waistband of her leggings. Respondent conceded, however, that she directed the prisoner to pull down her leggings to mid-thigh because of the length of her shirt (Tr. 251-52, 260, 268, 280-86, 300-01).

Although Respondent testified on cross examination that she did not observe the prisoner's underwear, she concededly indicated that she stated at her CCRB interview that the underwear was visible. Respondent indicated at trial that Ms. Dimaggio took the end of her shirt, along with the waistband of her leggings and underwear, and holding them flush, pulled all three outward. At this time, she testified upon examination by the Court, she could see the top of the prisoner's underwear (Tr. 268-69, 300-04).

Findings and Analysis

The understanding of both Cornejo and Respondent was the search of Ms. Dimaggio was to be of the scope delineated in Patrol Guide § 208-05 (1)(B), Search at Police Facility (Tr. 190-94, 205-06, 254, 287). This search is to be performed when a prisoner is brought to the station

house after an arrest. A “thorough search of the subject’s person and clothing” is to be conducted in order to remove lawful but dangerous items, as well as “weapons, contraband, and evidence” not previously found upon a frisk at the scene. See Patrol Guide § 208-05 (1)(B)(1). “[O]uter garments such as overcoats, jackets, sweaters, vests, hats, wigs, ties, belts, shoes and socks, handbags, and wallets” are to be removed. The remaining clothing, i.e., shirts, pants, dresses or skirts, “will be examined by grabbing, crushing and squeezing the garments and by sliding the hands across the body to detect articles that may be underneath or sewn to the clothing.” See PG § 208-05 (1)(B)(2).

The question is whether this search, which all three members testified should have been “extra thorough” to ensure no contraband was found as it had been in a recent incident at the command, actually was a strip search. It was conceded by the members that a strip search was neither authorized nor intended here, as it would not have been legally authorized. Interim Order No. 5, promulgated on February 9, 2009, but incorporating a Finest message of May 13, 2004, defines a strip search for the purposes of the Patrol Guide. It is “any search in which an individual’s undergarments (bra, underwear, etc. . .) and/or private areas are exposed or in which an individual[’s] clothing is removed, lifted, pulled up or pulled down to expose undergarments or private areas.”²

Respondent testified that the bottom of the prisoner’s bra and the top of the prisoner’s underwear were visible. Thus, by her own testimony, it was established that a strip search took place within the meaning of the Patrol Guide. An officer is permitted to run her hands over the cups and band of a female prisoner’s bra, over her shirt, to make sure nothing is secreted. The same is allowed in the genital area. Cf. *Case No. 84359/08*, p. 22 (Jan. 4, 2010) (crediting

² This quoted portion is taken from the Finest message itself. The portion in the Interim Order has slightly different syntax and punctuation, but otherwise is identical.

officer's account that she felt the bra through the prisoner's shirt); *Case Nos. 76235- & 76236/00*, p. 9 (June 19, 2001) (pat-down of clothed pelvic area does not constitute strip search).

Here, however, in order to search the prisoner, Respondent had her pull out the shirt with the bra so that anything would fall. She ordered the prisoner to do essentially the same thing with her pants and underwear. Respondent's counsel asserted that this in effect was less invasive than the procedure described in Patrol Guide § 208-05 (1)(B). That may be so, but the Department has made a judgment that strip searches include any search in which undergarments are exposed. This does not necessarily include inadvertent views of undergarments that might occur from prisoners wearing loose or baggy clothing while an officer conducts a search as described in Patrol Guide § 208-05 (1)(B). Respondent chose to utilize a different, not impermissible procedure. Having done so, she assumed the risk of exposing the prisoner's undergarments in violation of the Patrol Guide. As such, she is found Guilty of Specification No. 2. See Case No. 84323/08 (2008-0580), pp. 13-14 (Mar. 27, 2012) (strip search occurred when, in order to search prisoner's bra during stationhouse search, female officer lifted complainant's shirt and put her hand underneath it, exposing the bra).

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on August 31, 1998. Information from her personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

It was made clear in a 2004 Finest message, incorporated into an Interim Order, that a strip search is any search in which the officer exposes the undergarments of the prisoner.

Respondent, an approximately 17-year member of the Department, was responsible for knowing what the Patrol Guide requires and keeping current with it.

The CCRB recommended a penalty of 15 vacation days, although that was for both specifications. A penalty of five vacation days is precedential in recent similar cases concerning stationhouse searches that became strip searches. See 84323 [0850]; Case No. 85906/09 (May 12, 2010); Case No. 83951/08 (May 12, 2010). The Court also notes that Respondent has no formal disciplinary record in her long career. As such, the Court recommends, as the penalty, that Respondent forfeit five vacation days.


Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner – Trials

APPROVED

SEP 23 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER TARA BANNON
TAX REGISTRY NO. 921949
DISCIPLINARY CASE NO. 2014-11476

In 2014, Respondent received an overall rating of 3.5 "Highly Competent/Competent" on her annual performance evaluation. She was rated 3.0 "Competent" in 2012 and 4.0 "Highly Competent" in 2013. She has been awarded two medals for Excellent Police Duty. [REDACTED]

[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials